

Short Title: GSC Uniform Public Expression Protection Act.

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM PUBLIC EXPRESSION PROTECTION ACT.

The General Assembly of North Carolina enacts:

PART I. UNIFORM PUBLIC EXPRESSION PROTECTION ACT

[Staff Note: Redlining in this Part represents changes to the Uniform Act, not current law. GSC staff also made non-redlined changes to conform to the General Statutes numbering system and convention of capitalizing only the first word in a G.S. section catchline.]

SECTION 1. Chapter 1 of the General Statutes is amended by adding a new article

to read:

"Article 54.

"Uniform Public Expression Protection Act.

"§ 1-671. Short title.

This ~~act~~ Article may be cited as the Uniform Public Expression Protection Act.

"§ 1-672. Scope.

(a) In this ~~section~~ section, the following definitions apply:

- (1) ~~"Goods or services" does~~ Goods or services. – Does not include the creation, dissemination, exhibition, or advertisement or similar promotion of a dramatic, literary, musical, political, journalistic, or artistic work.
- (2) ~~"Governmental unit" means a~~ Governmental unit. – A public corporation or government or governmental subdivision, agency, or instrumentality.
- (3) ~~"Person" means an~~ Person. – An individual, estate, trust, partnership, business or nonprofit entity, governmental unit, or other legal entity.

(b) Except as otherwise provided in subsection ~~(e)~~, ~~(c)~~ of this section, this ~~act~~ Article applies to a ~~cause of action~~ cause of action asserted in a civil action against a person based on ~~the person's~~ any of the following:

(1) The person's communication in a legislative, executive, judicial, administrative, or other governmental ~~proceeding~~; proceeding.

(2) The person's communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental ~~proceeding~~; or proceeding.

(3) The person's exercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or ~~[cite to the state's constitution]~~, North Carolina Constitution, on a matter of public concern.

(c) This ~~act~~ Article does not apply to a ~~cause of action~~ asserted; any of the following causes of action:

(1) A cause of action against a governmental unit or an employee or agent of a governmental unit acting or purporting to act in an official ~~capacity~~; capacity.

(2) A cause of action by a governmental unit or an employee or agent of a governmental unit acting in an official capacity to enforce a law to protect against an imminent threat to public health ~~or safety~~; or safety.

(3) A cause of action against a person primarily engaged in the business of selling or leasing goods or services if the ~~cause of action~~ cause of action arises out of a communication related to the person's sale or lease of the goods or services.

[Legislative Note: If a state does not use the term "cause of action", the state should use its comparable term, such as "claim for relief" in subsections (b) and (c). The state also should substitute its comparable term for the term "[cause of action]" in Sections 3, 4(f), 7, 13, and 14.]

"§ 1-673. Special motion for expedited relief.

Not later than ~~[60]~~ 60 days after a party is served with a ~~[complaint]~~ ~~[petition]~~, complaint, crossclaim, counterclaim, third-party claim, or other pleading that asserts a ~~[cause of action]~~ cause of action to which this ~~[act]~~ Article applies, or at a later time on a showing of good cause, the party may file a special motion for expedited relief to ~~[dismiss]~~ ~~[strike]~~ dismiss the ~~[cause of action]~~ cause of action or part of the ~~[cause of action]~~ cause of action.

This defense may be made by motion like other defenses listed in G.S. 1A-1, Rule 12(b).
Notwithstanding G.S. 1A-1, Rule 12(g) and (h), however, this motion does not waive any other defense or objection, nor does a party's failure to consolidate this motion with another motion or pleading waive a party's right to file this motion.

[Legislative Note: A state should use the term "complaint" or "petition", or both, to describe any procedural means by which a cause of action may be asserted.

A state should title its motion one to "dismiss" or "strike" in accordance with its procedures and customs. The state also should substitute its term for the term "[dismiss] [strike]" in Section 7(a).

A state may need to amend its statutes or rules of civil procedure to prevent a motion under this section from being considered a first pleading or motion that waives a defense or precludes the filing of another pleading or motion.]

[Staff Note: North Carolina Rule of Civil Procedure 12 provides:

Rule 12. Defenses and objections; when and how presented; by pleading or motion; motion for judgment on pleading.

(a) (1) *When Presented.* – A defendant shall serve his answer within 30 days after service of the summons and complaint upon him. A party served with a pleading stating a crossclaim against him shall serve an answer thereto within 30 days after service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 30 days after service of the answer or, if a reply is ordered by the court, within 30 days after service of the order, unless the order otherwise directs. Service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court:

- a. *The responsive pleading shall be served within 20 days after notice of the court's action in ruling on the motion or postponing its disposition until the trial on the merits;*
- b. *If the court grants a motion for a more definite statement, the responsive pleading shall be served within 20 days after service of the more definite statement.*

(2) *Cases Removed to United States District Court.* – Upon the filing in a district court of the United States of a petition for the removal of a civil action or proceeding from a court in this State and the filing of a copy of the petition in the State court, the State court shall proceed no further therein unless and until the case is remanded. If it shall be finally determined in the United States

1 *courts that the action or proceeding was not removable or was improperly*
2 *removed, or for other reason should be remanded, and a final order is entered*
3 *remanding the action or proceeding to the State court, the defendant or*
4 *defendants, or any other party who would have been permitted or required to*
5 *file a pleading had the proceedings to remove not been instituted, shall have*
6 *30 days after the filing in such State court of a certified copy of the order of*
7 *remand to file motions and to answer or otherwise plead.*

8 (b) *How Presented. – Every defense, in law or fact, to a claim for relief in any pleading,*
9 *whether a claim, counterclaim, crossclaim, or third-party claim, shall be asserted in the*
10 *responsive pleading thereto if one is required, except that the following defenses may at the*
11 *option of the pleader be made by motion:*

- 12 (1) *Lack of jurisdiction over the subject matter,*
13 (2) *Lack of jurisdiction over the person,*
14 (3) *Improper venue or division,*
15 (4) *Insufficiency of process,*
16 (5) *Insufficiency of service of process,*
17 (6) *Failure to state a claim upon which relief can be granted,*
18 (7) *Failure to join a necessary party.*

19 *A motion making any of these defenses shall be made before pleading if a further pleading is*
20 *permitted. The consequences of failure to make such a motion shall be as provided in sections*
21 *(g) and (h). No defense or objection is waived by being joined with one or more other defenses*
22 *or objections in a responsive pleading or motion. Obtaining an extension of time within which to*
23 *answer or otherwise plead shall not constitute a waiver of any defense herein set forth. If a*
24 *pleading sets forth a claim for relief to which the adverse party is not required to serve a*
25 *responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief.*
26 *If, on a motion asserting the defense numbered (6), to dismiss for failure of the pleading to state*
27 *a claim upon which relief can be granted, matters outside the pleading are presented to and not*
28 *excluded by the court, the motion shall be treated as one for summary judgment and disposed of*
29 *as provided in Rule 56, and all parties shall be given reasonable opportunity to present all*
30 *material made pertinent to such a motion by Rule 56.*

31 (c) *Motion for judgment on the pleadings. – After the pleadings are closed but within*
32 *such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a*
33 *motion for judgment on the pleadings, matters outside the pleadings are presented to and not*
34 *excluded by the court, the motion shall be treated as one for summary judgment and disposed of*
35 *as provided in Rule 56, and all parties shall be given reasonable opportunity to present all*
36 *material made pertinent to such a motion by Rule 56.*

37 (d) *Preliminary hearings. – The defenses specifically enumerated (1) through (7) in*
38 *section (b) of this rule, whether made in a pleading or by motion, and the motion for judgment*
39 *on the pleadings mentioned in section (c) of this rule shall be heard and determined before trial*
40 *on application of any party, unless the judge orders that the hearing and determination thereof*
41 *be deferred until the trial.*

42 (e) *Motion for more definite statement. – If a pleading to which a responsive pleading is*
43 *permitted is so vague or ambiguous that a party cannot reasonably be required to frame a*
44 *responsive pleading, he may move for a more definite statement before interposing his responsive*
45 *pleading. The motion shall point out the defects complained of and the details desired. If the*
46 *motion is granted and the order of the judge is not obeyed within 20 days after notice of the order*
47 *or within such other time as the judge may fix, the judge may strike the pleading to which the*
48 *motion was directed or make such orders as he deems just.*

49 (f) *Motion to strike. – Upon motion made by a party before responding to a pleading or,*
50 *if no responsive pleading is permitted by these rules, upon motion made by a party within 30*

1 *days after the service of the pleading upon him or upon the judge's own initiative at any time, the*
2 *judge may order stricken from any pleading any insufficient defense or any redundant, irrelevant,*
3 *immaterial, impertinent, or scandalous matter.*

4 (g) *Consolidation of defenses in motion. – A party who makes a motion under this rule*
5 *may join with it any other motions herein provided for and then available to him. If a party makes*
6 *a motion under this rule but omits therefrom any defense or objection then available to him which*
7 *this rule permits to be raised by motion, he shall not thereafter make a motion based on the*
8 *defense or objection so omitted, except a motion as provided in section (h)(2) hereof on any of*
9 *the grounds there stated.*

10 (h) *Waiver or preservation of certain defenses. –*

11 (1) *A defense of lack of jurisdiction over the person, improper venue, insufficiency*
12 *of process, or insufficiency of service of process is waived (i) if omitted from*
13 *a motion in the circumstances described in section (g), or (ii) if it is neither*
14 *made by motion under this rule nor included in a responsive pleading or an*
15 *amendment thereof permitted by Rule 15(a) to be made as a matter of course.*

16 (2) *A defense of failure to state a claim upon which relief can be granted, a*
17 *defense of failure to join a necessary party, and an objection of failure to state*
18 *a legal defense to a claim may be made in any pleading permitted or ordered*
19 *under Rule 7(a), or by motion for judgment on the pleadings, or at the trial*
20 *on the merits.*

21 (3) *Whenever it appears by suggestion of the parties or otherwise that the court*
22 *lacks jurisdiction of the subject matter, the court shall dismiss the action.]*

23
24 **"§ 1-674. Stay.**

25 (a) Except as otherwise provided in subsections (d) through ~~(g)~~, (g) of this section, on the
26 filing of a motion under ~~Section 3-~~ G.S. 1-673, all of the following apply:

27 (1) ~~all~~ All other proceedings between the moving party and responding party,
28 including discovery and a pending hearing or motion, ~~are stayed; and~~ stayed.

29 (2) ~~on~~ On motion by the moving party, the court may stay a hearing or motion
30 involving another party, or discovery by another party, if the hearing or ruling
31 on the motion would adjudicate, or the discovery would relate to, an issue
32 material to the motion under ~~Section 3-~~ G.S. 1-673.

33 (b) A stay under subsection (a) of this section remains in effect until entry of an order
34 ruling on the motion under ~~Section 3-~~ G.S. 1-673 and expiration of the time under ~~Section 9-~~
35 G.S. 1-679 for the moving party to appeal the order.

36 (c) Except as otherwise provided in subsections (e), (f), and ~~(g)~~, (g) of this section, if a
37 party appeals from an order ruling on a motion under ~~Section 3-~~ G.S. 1-673, all proceedings

between all parties in the action are stayed. The stay remains in effect until the conclusion of the appeal.

(d) During a stay under subsection ~~(a)~~, (a) of this section, the court may allow limited discovery if a party shows that specific information is necessary to establish whether a party has satisfied or failed to satisfy a burden under ~~Section 7(a)~~ G.S. 1-677(a) and the information is not reasonably available unless discovery is allowed.

(e) A motion under ~~Section 10~~ G.S. 1-680 for costs, attorney's fees, and expenses is not subject to a stay under this section.

(f) A stay under this section does not affect a party's ability voluntarily to ~~dismiss~~ [nonsuit] ~~dismiss~~ a ~~cause of action~~ cause of action or part of a ~~cause of action~~ cause of action or move to ~~sever~~ sever a ~~cause of action~~ cause of action.

(g) During a stay under this section, the court for good cause may hear and rule ~~on~~ on the following motions:

(1) ~~a~~ A motion unrelated to the motion under ~~Section 3~~ and G.S. 1-673.

(2) ~~a~~ A motion seeking a special or preliminary injunction to protect against an imminent threat to public health or safety.

[Legislative Note: In subsection (f), a state should use the term "dismiss" or "nonsuit" in accordance with its procedures and customs. The state also should substitute its term for the term "[dismiss] [nonsuit]" in Section 7(b) and (c).

If a state does not use the term "sever" to describe a motion to sever, the state should use its comparable term in subsection (f).]

"§ 1-675. Hearing.

(a) The court shall hear a motion under ~~Section 3~~ G.S. 1-673 not later than ~~60~~ 60 days after filing of the motion, unless the court orders a later ~~hearing~~ hearing for any of the following reasons:

(1) ~~to~~ To allow discovery under ~~Section 4(d)~~ or G.S. 1-674(d).

(2) ~~for~~ For other good cause.

(b) If the court orders a later hearing under ~~subsection (a)(1),~~ subdivision (a)(1) of this section, the court shall hear the motion under ~~Section 3, G.S. 1-673~~ not later than ~~[60]~~ 60 days after the court order allowing the discovery, unless the court orders a later hearing under ~~subsection (a)(2),~~ subdivision (a)(2) of this section.

"§ 1-676. Proof.

In ruling on a motion under ~~Section 3, G.S. 1-673,~~ the court shall consider the pleadings, the motion, any reply or response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment under ~~[cite to the state's statute or rule governing summary judgment].~~ G.S. 1A-1, Rule 56.

"1-677. ~~[Dismissal of]~~ ~~[Striking]~~ Dismissal of cause of action in whole or part.

(a) In ruling on a motion under ~~Section 3, G.S. 1-673,~~ the court shall ~~[dismiss]~~ ~~[strike]~~ dismiss with prejudice a ~~[cause of action],~~ cause of action, or part of a ~~[cause of action],~~ if: cause of action, if all of the following are true:

(1) ~~the~~ The moving party establishes under ~~Section 2(b) G.S. 1-672(b)~~ that this ~~[act] applies;~~ Article applies.

(2) ~~the~~ The responding party fails to establish under ~~Section 2(c) G.S. 1-672(c)~~ that this ~~[act]~~ Article does not ~~apply;~~ and apply.

(3) ~~either;~~ Any of the following:

a. ~~the~~ The responding party fails to establish a prima facie case as to each essential element of the ~~[cause of action];~~ or cause of action.

b. ~~the~~ The moving party establishes ~~that;~~ any of the following:

1. ~~the~~ The responding party failed to state a ~~[cause of action]~~ cause of action upon which relief can be ~~granted;~~ or granted.

2. ~~there~~ There is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the ~~[cause of action]~~ cause of action or part of the ~~[cause of action]~~ cause of action.

(b) A voluntary ~~[dismissal]~~ ~~[nonsuit]~~ dismissal without prejudice of a responding party's ~~[cause of action]~~, cause of action, or part of a ~~[cause of action]~~, cause of action, that is the subject of a motion under ~~Section 3~~ G.S. 1-673 does not affect a moving party's right to obtain a ruling on the motion and seek costs, attorney's fees, and expenses under ~~Section 10~~ G.S. 1-680.

(c) A voluntary ~~[dismissal]~~ ~~[nonsuit]~~ dismissal with prejudice of a responding party's ~~[cause of action]~~, cause of action, or part of a ~~[cause of action]~~, cause of action, that is the subject of a motion under ~~Section 3~~ G.S. 1-673 establishes for the purpose of ~~Section 10~~ G.S. 1-680 that the moving party prevailed on the motion.

"§ 1-678. Ruling.

The court shall rule on a motion under ~~Section 3~~ G.S. 1-673 not later than ~~[60]~~ 60 days after a hearing under ~~Section 5~~ G.S. 1-675.

[Staff Note: In its memo, the Duke Law First Amendment Clinic suggests that the General Statutes Commission might consider adding a section comparable to the following Texas statute: § 27.0075. Effect of Ruling.

*Neither the court's ruling on the motion nor the fact that it made such a ruling shall be admissible in evidence at any later stage of the case, and no burden of proof or degree of proof otherwise applicable shall be affected by the ruling.
Tex. Civ. Prac. & Rem. Code § 27.0075.]*

"§ 1-679. Appeal.

A moving party may appeal as a matter of right from an order denying, in whole or in part, a motion under ~~Section 3~~ G.S. 1-673. The appeal must be filed not later than ~~[21]~~ 30 days after entry of the order.

[Legislative Note: A state should insert a time to appeal consistent with other interlocutory appeals.]

This section may require amendment of a state's interlocutory appeal statute or court rule.]

[Staff Note: North Carolina Rule of Appellate Procedure 3 provides:

Rule 3. Appeal in Civil Cases—How and When Taken

(a) Filing the Notice of Appeal. Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a civil action or special proceeding may take appeal by filing notice of appeal with the clerk of superior court and serving copies thereof upon all other parties within the time prescribed by subsection (c) of this rule.

(b) Special Provisions. Appeals in the following types of cases shall be taken in the time and manner set out in the General Statutes and Rules of Appellate Procedure sections noted:

(1) Juvenile matters pursuant to N.C.G.S. § 7B-2602.

(2) Appeals pursuant to N.C.G.S. § 7B-1001 shall be subject to the provisions of Rule 3.1.

(c) Time for Taking Appeal. In civil actions and special proceedings, a party must file and serve a notice of appeal:

(1) within thirty days after entry of judgment if the party has been served with a copy of the judgment within the three-day period prescribed by Rule 58 of the Rules of Civil Procedure; or

(2) within thirty days after service upon the party of a copy of the judgment if service was not made within that three-day period; provided that

(3) if a timely motion is made by any party for relief under Rules 50(b), 52(b) or 59 of the Rules of Civil Procedure, the thirty-day period for taking appeal is tolled as to all parties until entry of an order disposing of the motion and then runs as to each party from the date of entry of the order or its untimely service upon the party, as provided in subdivisions (1) and (2) of this subsection (c).

In computing the time for filing a notice of appeal, the provision for additional time after service by mail in Rule 27(b) of these rules and Rule 6(e) of the Rules of Civil Procedure shall not apply.

If timely notice of appeal is filed and served by a party, any other party may file and serve a notice of appeal within ten days after the first notice of appeal was served on such party.

(d) Content of Notice of Appeal. The notice of appeal required to be filed and served by subsection (a) of this rule shall specify the party or parties taking the appeal; shall designate the judgment or order from which appeal is taken and the court to which appeal is taken; and shall be signed by counsel of record for the party or parties taking the appeal, or by any such party not represented by counsel of record.

(e) Service of Notice of Appeal. Service of copies of the notice of appeal may be made as provided in Rule 26."]

"§ 1-680. Costs, attorney's fees, and expenses.

On a motion under ~~Section 3, G.S. 1-673,~~ the court shall award court costs, reasonable attorney's fees, and reasonable litigation expenses related to the ~~motion~~ motion as follows:

~~to~~ To the moving party if the moving party prevails on the ~~motion~~ or motion.

(2) ~~to~~ To the responding party if the responding party prevails on the motion and the court finds that the motion was frivolous or filed solely with intent to delay the proceeding.

"§ 1-681. Construction.

This ~~act~~ Article must be broadly construed and applied to protect the exercise of the right of freedom of speech and of the press, the right to assemble and petition, and the right of association, guaranteed by the United States Constitution or ~~[cite to the state's constitution]~~. North Carolina Constitution.

"§ 1-682. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it."

PART II. CONFORMING CHANGES

[Legislative Note: Section 9 may require amendment of a state's interlocutory appeal statute or court rule.

A state may need to amend its statutes or rules of civil procedure to prevent a motion under this act from being considered a first pleading or motion that waives a defense or precludes the filing of another pleading or motion.]

SECTION 2. G.S. 7A-27 reads as rewritten:

"§ 7A-27. Appeals of right from the courts of the trial divisions.

(a) Appeal lies of right directly to the Supreme Court in any of the following cases:

(1) All cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death.

(2) From any final judgment in a case designated as a mandatory complex business case pursuant to G.S. 7A-45.4 or designated as a discretionary

complex business case pursuant to Rule 2.1 of the General Rules of Practice
for the Superior and District Courts.

(3) From any interlocutory order of a Business Court Judge that does any of the
following:

- a. Affects a substantial right.
- b. In effect determines the action and prevents a judgment from which an
appeal might be taken.
- c. Discontinues the action.
- d. Grants or refuses a new trial.

(4) Any trial court's decision regarding class action certification under G.S. 1A-1,
Rule 23.

(5) Any order that terminates parental rights or denies a petition or motion to
terminate parental rights.

(a1) Repealed by Session Laws 2016-125, s. 22(b), 4th Ex. Sess., effective December 1,
2016.

(b) Except as provided in subsection (a) of this section, appeal lies of right directly to the
Court of Appeals in any of the following cases:

(1) From any final judgment of a superior court, other than one based on a plea of
guilty or nolo contendere, including any final judgment entered upon review
of a decision of an administrative agency, except for a final judgment entered
upon review of a court martial under G.S. 127A-62.

(2) From any final judgment of a district court in a civil action.

(3) From any interlocutory order or judgment of a superior court or district court
in a civil action or proceeding that does any of the following:

- a. Affects a substantial right.

- b. In effect determines the action and prevents a judgment from which an appeal might be taken.
- c. Discontinues the action.
- d. Grants or refuses a new trial.
- e. Determines a claim prosecuted under G.S. 50-19.1.
- f. Grants temporary injunctive relief restraining the State or a political subdivision of the State from enforcing the operation or execution of an act of the General Assembly. This sub-subdivision only applies where the State or a political subdivision of the State is a party in the civil action.
- g. Denies, in whole or in part, a special motion for expedited relief under G.S. 1-673.

(4) From any other order or judgment of the superior court from which an appeal is authorized by statute.

(c) through (e) Repealed by Session Laws 2013-411, s. 1, effective August 23, 2013."

PART III. COMMENTS AND EFFECTIVE DATE

SECTION 3.(a) The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Comments to the Uniform Public Expression Protection Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 3.(b) This act becomes effective October 1, 2022, and applies to a civil action filed or cause of action asserted in a civil action on or after that date.